IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3572 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRABHU BUILDERS & 1 - Petitioner(s)
Versus
GUJARAT HOUSING BOARD & 2 - Respondent(s)

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Appearance :
MR PARESH M DAVE for Petitioner(s) : 1 - 2.
MR YN RAVANI for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 06/11/2006

ORAL JUDGMENT

1. Mr. Paresh M. Dave, learned counsel for the petitioners, Mr. Y.N. Ravani, learned counsel for the respondents.

2. Present is a petition by one Prabhu Builders, requesting the Court that a direction be issued against the respondents to make payment of the amount which they had suffered in form of escalation of the raw material. Submission is that during course of certain constructions, the prices started rising and the contractors were finding it difficult to meet with the expenses, therefore, they approached the Gujarat Housing Board that some escalation be granted. Consequent upon such representation, Housing Board assured them that 3% escalation would be ordered in favour of the contractors. It is also the case of the petitioners that the Housing Board had recovered sum of Rs.6,000/- from each unit holder as escalation in price, but they are not paying the said amount to the present petitioners.

3. The respondents have denied their liability.

4. Placing reliance upon the judgment of the Apex Court in the matter of **Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd. [AIR 1983 SC 848],** it is submitted that a writ in the present nature requiring the respondent to perform its statutory duty can always be maintained in the Court and the High Court would be justified in issuing a direction to the respondent to make the payment.

5. In the matter of Lotus Hotels Pvt. Ltd., the Financial Corporation had agreed to extend certain loan facilities, they did not fulfill their promise, therefore, the said Lotus Hotels filed a writ and ultimately, the High Court observed that a direction can be issued to the Corporation to perform its statutory duty.

6. In the present matter, the dispute between the parties is in relation to the escalation, its collection and its payment to the respondents. The promise made by the respondents cannot be said to be a statutory promise. The agreement entered into between the parties was, in fact, a statutory agreement and the assurance so long as it is not part of statutory duty cannot be enforced through the High Court.

7. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S. GARG, J.]

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